1929
*Dec. 9.
1930
*April 10.

IN THE MATTER OF THE INCOME WAR TAX ACT 1917

THE MINISTER OF NATIONAL REVENUE ..... APPELLANT;

AND

THE SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS LTD.. RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Income tax—Income War Tax Act, R.S.C., 1927, c. 97—"Income"—"Profit or gain" from a trade or business—Assessability for income tax of "Saskatchewan Wheat Pool" in respect of sums retained for "commercial reserve" and "elevator reserve."

The respondent, commonly known as the "Saskatchewan Wheat Pool," was incorporated under the Saskatchewan *Companies Act*, and its incorporation was confirmed by c. 66 of 1924 (Sask.). Its primary object was to enable its members, who were Saskatchewan grain growers, to market their grain co-operatively. It was assessed for income under the *Income War Tax Act* (now R.S.C., 1927, c. 97) in respect of certain sums which it retained, from the gross returns of sale of grain, as a "commercial reserve" and as an "elevator reserve." It objected to the assessment on the ground that the sums so retained did not constitute income within the *Income War Tax Act*.

Held, that it was not assessable in respect of the said sums. Having regard to the provisions of its memorandum and articles of association, of its confirming Act, and of its agreement with the grain growers (its shareholders), its employment of the reserves, and provisions made for return to the growers, it could not be said that the reserves assessed constituted taxable income of respondent within the meaning of the *Income War Tax Act*. The basis of chargeability to income tax is the operation of a trade or business giving rise to a profit. The respondent in respect of said reserves was merely machinery for collecting contributions from the growers, not as its shareholders but as subscribers to the fund, and for using those moneys for the growers' benefit and handing them back in some form or other when no longer required; and hence the reserves could not be said to be "profits or gains" of respondent.

New York Life Ins. Co. v. *Styles*, 14 App. Cas., 481; *Jones* v. *S. W. Lancashire Coal Owners' Assn., Ltd.*, 42 T.L.R. 401, and other cases, referred to and discussed. *Last* v. *London Assur. Corp.*, 10 App. Cas. 438; *Commissioners of Inland Revenue* v. *Sparkford Vale Co-operative Soc. Ltd.*, 133 L.T., 231; *Fraser Valley Milk Producers' Assn.* v. *Minister of National Revenue*, [1929] Can. S.C.R. 435; *Liverpool Corn Trade Assn. Ltd.* v. *Monks*, [1926] 2 K.B. 110, and *Cornish Mutual Assur. Co. Ltd.* v. *Commissioner of Inland Revenue*, [1926] A.C., 281, discussed and distinguished.

Judgment of the Exchequer Court of Canada (Audette J.), [1929] Ex. C.R., 180, affirmed.

*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Smith JJ.

APPEAL by the Minister of National Revenue from the judgment of the Exchequer Court of Canada (Audette J.) (1), allowing the appeal of the present respondent from assessments made against it for the years 1925 and 1926, under the *Income War Tax Act*, now R.S.C., 1927, c. 97. By the judgment of the Exchequer Court the assessments were declared to have been erroneously made and were set aside.

The material facts of the case and the questions in issue are sufficiently stated in the judgment now reported. The appeal was dismissed with costs.

C. F. Elliott K.C. for the appellant.

O. M. Biggar K.C. and *R. H. Milliken K.C.* for the respondent.

The judgment of the court was delivered by

LAMONT J.—This is an appeal by the Minister of National Revenue from the judgment of Mr. Justice Audette (1), in which he held that the respondent corporation was not liable to pay a tax, under the *Income War Tax Act* (now R.S.C., 1927, c. 97), in respect of the sums of money assessed against it as income. Section 9 of the Act provides that,

> Save as herein otherwise provided, corporations and joint stock companies, no matter how created or organized, shall pay a tax, at the rate applicable thereto set forth in the First Schedule of this Act, upon income exceeding two thousand dollars

The whole question here is, were the moneys, in respect of which the respondent was assessed for each of the years 1925 and 1926, part of its income for the year in question?

The respondent (commonly known as the "Saskatchewan Wheat Pool") is a body corporate, having been incorporated under the *Companies Act* of Saskatchewan on August 25, 1923, which incorporation was confirmed by statute (c. 66 of 1924). The primary object of its incorporation was to enable its members, who were Saskatchewan grain growers, to market their grain co-operatively. Its authorized capital is $100,000 divided into 100,000 shares of one dollar each. Shares in the corporation can be issued only to Saskatchewan grain growers, and of those, only to such as

(1) [1929] Ex. C.R. 180.

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enter into an agreement with the company for the marketing of grain in the form required by the company.

In this agreement the grower applies for one share of the corporation's capital stock and the corporation agrees to issue it to him. Each shareholder has only one vote and voting by proxy is prohibited. The governing body consists of sixteen directors, one from each of sixteen districts into which, for the purposes of the corporation, the province is divided. The shareholders in each district, from among themselves, elect ten delegates, and these delegates elect a director to the Board of Directors. The 160 delegates constitute the voting body at the annual meeting. Both the memorandum of association, and the statute confirming the same, contain the following provision:—

> No dividend shall be declared or paid to the shareholders of the company on the shares held by them in the company.

By its memorandum of association the objects of the respondent corporation are, *inter alia*, declared to be:—

1. To carry on the business of buying, selling, marketing and exporting of grain either as principal or agent.
2. To enter into any contract whatsoever for or incidental to the co-operative marketing of grain.
3. To act as agent or broker for its shareholders.
4. To operate a pool for grain received or handled by the corporation.
5. To make advances and payments from time to time on all grain delivered.
6. To enter into and carry into effect all and every agreement for the co-operative marketing of grain and, particularly, agreements with growers of grain in the province of Saskatchewan, a copy of which agreement is attached to the memorandum of association.
7. To distribute or pay to any person or persons who have held a contract or contracts with the company on the basis, so far as practicable, of their contributions, the moneys deducted or withheld from the proceeds of all or any commodity handled for such contract holder.

Of the articles of association reference need be made to one only, which provides that the business of the company is to be conducted in such a manner that, so far as possible, no profits will be taken from any member of the company on the marketing of his grain.

In the Marketing Agreement the respondent is referred to as the "Association" and, for convenience, I shall continue that designation.

By clause 8 of the agreement the grower appoints the Association his sole and exclusive agent, factor and mercantile agent within the meaning of "The Factors Act" of Saskatchewan and also his attorney in fact with full power and authority in its name, in the name of the grower, or otherwise,

(*a*) to receive, transport and market the wheat delivered to it by the grower;

(*c*) to borrow on its own account on the security of the grain delivered and to exercise all rights of ownership without limitation in respect of such grain;

(*d*) to retain and deduct from the gross returns from the sale of the wheat delivered to it by the growers, the amount necessary to cover all operating costs and expenses, and all other proper charges, and,

in addition, the Association may deduct such percentage, not exceeding 1% of the gross selling price of the wheat as it shall deem desirable as a commercial reserve to be used for any of the purposes or activities of the Association;

(*f*) to deduct from the gross returns from the sale of all wheat handled by the Association for growers * * * a sum out of each grower's proper proportion thereof, not exceeding two cents per bushel and to invest the same for and on behalf of the Association in acquiring either by construction, purchase, lease or otherwise such facilities for handling grain as the directors of the Association may deem advisable or in the capital stock or shares of any company or association formed or to be formed for the purpose of so erecting, constructing or acquiring such facilities and to sell or otherwise dispose of any such investment and re-invest the proceeds thereof in like manner.

This latter deduction is commonly known as the "Elevator Reserve."

Clause 9 reads as follows:—

9. Any unused balance of reserves and surpluses shall stand in the name of the Association and be owned by the members and shall, when in the opinion of the directors a distribution should be made or upon a dissolution of this Association, be divided in the same proportions in which it was contributed by the members.

Clause 16 provides for an advance to be made to the grower on delivery of his grain and for payment of the proceeds thereof to him when sold, less advances already made, deductions retained as provided for in the contract, and marketing expenses. It also provides that the grower's

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whole right to the proceeds of the grain "shall be to receive the initial advance and his due proportionate share of the moneys realized from the operation of the pool, less the deductions herein provided for."

By clause 26 the grower admits that the marketing agreement is a contract of agency coupled with a financial interest, and, by clause 27, any loss which the Association may suffer on account of inferior grade, quantity, quality or standard or condition at delivery, shall be charged against the grower and deducted from his net returns.

It is only the sums retained by the Association as a Commercial Reserve and as an Elevator Reserve that we are concerned with in this appeal.

Out of the proceeds of the grower's wheat the Association made the following deductions, at uniform rates pursuant to clause 8 (*d*) and 8 (*f*):

1925 (wheat operations)	
Commercial Reserve	$ 756,462 65
Elevator Reserve	958,238 32
	$1,714,700 97
1926 (wheat operations)	
Commercial Reserve	907,113 90
Elevator Reserve	2,594,267 53
	$3,501,381 43

In addition to the deductions made in 1926 in respect of wheat operations, there were certain sums retained by the Association out of the proceeds of the sale of coarse grain. Some 30,000 out of 80,000 growers, who held agreements for the marketing of wheat, also held agreements relating to the marketing of coarse grains. These latter agreements authorized the Association to sell the coarse grains delivered to it by the growers and to retain out of the proceeds a portion thereof, not exceeding certain specified percentages, as a commercial reserve, and as an elevator reserve. The amounts deducted in 1926, under the coarse grains agreements, were as follows:—

Commercial Reserve	$ 76,670 28
Elevator Reserve	157,498 35

For these sums retained by the Association in the years 1925 and 1926, it was assessed, and a tax, at the rate prescribed in the schedule, was levied thereon.

The Association refused to pay the taxes levied, on the ground that the sums deducted as reserves did not constitute income within the meaning of the *Income War Tax Act*.

Before inquiring into the question as to whether or not these reserves constitute taxable income, it may be useful to ascertain how they were employed by the Association, and what provision, if any, was made for their return to the growers from the proceeds of whose grain they were taken.

Dealing first with the elevator reserve, which is by far the larger amount, it will be observed that the agreements provide that this reserve is to be invested, on behalf of the Association, in procuring facilities for handling the grain, or in the capital stock of any company formed for the acquisition of such facilities. The evidence shews that the Association organized and incorporated the Saskatchewan Pool Elevators Limited, of which it owns all the capital stock.

To the Pool Elevators Limited the Association handed over all the moneys retained by it as an elevator reserve and the same were expended in acquiring elevator facilities.

The moneys retained as a commercial reserve were employed as follows:—

1. In paying the expenses of the Association from the beginning of each crop year until the grain of the year was sold and a deduction made from the sale proceeds to cover the operating expenses.

2. In advances to the Pool Elevators Limited.

3. In advances made from time to time to the Canadian Co-operative Wheat Producers Limited, commonly called the Central Selling Agency. This corporation was organized by the wheat pools of the provinces of Manitoba, Saskatchewan and Alberta, and was given charge of the actual selling operations of the three pools.

In ascertaining the final destination of these reserves regard must be had to clause 29 of the agreement, which provides that the Association shall receive the sale proceeds of the growers' grain and shall

account and settle for any moneys so received by crediting the same to the Grower on the Books of the Association, which moneys, less all deductions as herein provided, shall be distributed pursuant to the provisions of this Agreement.

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The whole marketing operation is as follows:—

The grower delivers his grain to the country elevator, either a Line elevator or an elevator belonging to the pool. By an arrangement made by the Association, prior to the commencement of the delivery of grain, the grower receives in cash, from the elevator at which his grain is delivered, a certain price per bushel fixed by the Association. The grain is then forwarded to a terminal elevator operated by the Central Selling Agency, and the documents of title sent to the agency's head office. Upon receipt thereof the Selling Agency remits to the country elevator the amount advanced by it to the grower. The Central Selling Agency from time to time markets the grain, and, out of the proceeds thereof, it retains the sums which it paid to the country elevator for moneys advanced to the growers. The balance it remits to the Association. The Association credits on its books each individual grower with his proportionate share. This it does from time to time as sales are made. One or more interim payments are made to the growers. When the grain has all been sold and the proportionate share of each grower in the proceeds determined, the Association calculates the amount which, under the marketing agreement, should be deducted for, (1) operating expenses; (2) commercial reserve, and (3) elevator reserve. The difference between the aggregate of the deductions, plus payments already made, and the amount credited to the grower in the books of the Association, is remitted to him as a final payment. After the deductions are made a notice is sent to the grower informing him of the amounts retained out of the proceeds of his grain for the commercial reserve and for the elevator reserve. Interest at 6% has been paid each year by the Pool Elevators Limited on the elevator reserves handed over to it, and, at the expiration of the agreement (1927) this interest was distributed among the growers in proportion to the amount deducted from each for the elevator reserve. The only distribution that has been made of the principal moneys of the two reserves has been in cases where the grower died, leaving his family in not very affluent circumstances. In 119 of these cases the directors have remitted, to the personal representatives of the deceased grower, the moneys retained by it out of the

proceeds of his grain, except that retained to cover operating expenses.

In view of these facts can it properly be said that the amount of these two reserves formed part of the income of the Association within the meaning of the *Income War Tax Act?*

On the argument it was contended that the Association received and marketed the grain merely as agent and that it held the proceeds thereof in trust for the growers in whom the beneficial title always remained. On this view the moneys comprising the reserves would not be moneys belonging to the Association and, therefore, would not be taxable. In my opinion the marketing agreement and the confirming Act do more than simply create the relationship of principal and agent, or mercantile agent, in the ordinary sense, between the growers and the Association. That relationship the agreement, without doubt, creates, but, in addition thereto, the property in the grain and in the proceeds is vested in the Association and all rights of ownership thereto without limitation are exercisable by it, for all or any of the purposes set out in the agreement. One of the purposes is to settle all claims for damages or otherwise that may arise in connection with the exercise by the Association of any of the powers or authority granted by the agreement. If, therefore, the reserves assessed in this case could properly be considered as assessable income of the Association, if no question of agency were involved, they can still be considered as income and the tax thereon a claim which the growers have authorized the Association to pay. Can these reserves properly be said to be "income"?

The definition of "income" for the purposes of the Act is found in section 3 thereof. As applied to this case "income" means the annual net profit or gain directly or indirectly received by a person from any trade or business, whether such profit or gain is distributed or not.

In revenue cases it is a well recognized principle that "regard must be had to the substance of the transactions relied on to bring the subject within the charge to a duty

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and the form may be disregarded." Pollock M.R., in *Inland Revenue Commissioners* v. *Eccentric Club, Ltd.* (1). It is also well established that once the sum assessed has been ascertained to be profits of a trade or business, neither the motive which brought these profits into existence nor their application when made is material. *Mersey Docks & Harbour Board* v. *Lucas* (2). Nor does it signify that they were obtained by a company through trading with its own members as customers. Although a company may be given very wide powers, "its business is the business of doing what is necessary to carry out the objects which it elects to carry out." Lord Sterndale M.R., in *Commissioners of Inland Revenue* v. *Korean Syndicate, Ltd.* (3).

The business which the Association in this case elected to carry out was the marketing of grain for those who had entered into contracts with it for that purpose. Was that business being carried on for profit?

What is considered to be a profit or gain arising from a trade or business has been discussed in numerous cases. In *Gresham Life Assurance Society* v. *Styles* (4), Lord Herschell said:—

> When we speak of the profits or gains of a trader we mean that which he has made by his trading. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise.

In *Ryall* v. *Hoare* (5), Rowlatt J. said:—

> Without giving an exhaustive definition, therefore, we may say that where an emolument accrues by virtue of service rendered whether by way of action or permission, such emoluments are included in "profits or gains."

The test to be applied laid down in *Californian Copper Syndicate* v. *Harris* (6), is whether the amount in dispute was

> a gain made in an operation of business in carrying out a scheme for profit making.

This principle was approved by the Privy Council in *Commissioner of Taxes* v. *Melbourne Trust, Limited* (7), and by the House of Lords in *Ducker* v. *Rees Roturbo Development Syndicate Ltd.* (8).

(1) [1924] 1 K.B., 390, at p. 414.
(2) (1883) 8 App. Cas., 891.
(3) [1921] 3 K.B., 258, at p. 270.
(4) [1892] A.C. 309, at pp. 322-323.
(5) [1923] 2 K.B., 447, at p. 454.
(6) (1904) 5 T.C. 159.
(7) [1914] A.C. 1001.
(8) [1928] A.C. 132.

On the argument numerous cases were cited to us for the purpose of shewing when a company's surplus would be considered "profits or gains of a trade or business" and when it would not.

The cases of *Last* v. *London Assurance Corporation* (1), and *New York Life Insurance Co.* v. *Styles* (2), were cited respectively on either side. In the former case an insurance company, whose shareholders and policyholders were two different bodies, issued participating policies, according to the terms of which at the end of each quinquennial period the "gross profits" of such policies were distributed thus: Two-thirds were returned by way of bonus or abatement of premiums to the holders of such policies, and one-third went to the company. It was held by the House of Lords that the two-thirds returned to the policyholders were profits or gains to the company, and, therefore, taxable. In the latter case the company had no shares or shareholders. The only members were the holders of participating policies, each of whom was entitled to a share of the assets and liable for losses. The policyholders paid in premiums an amount in excess of the sums required for expenses and liabilities, and this excess of payment was returned to the policyholders at the end of the year in the shape of a cash reduction from future premiums or an addition to the amount of the policy. It was held that the amounts returned to the policyholders were not profits made by the company. The distinction between these two cases made by their Lordships was, that in *Last*'s case the company was making profits, and intending to make profits, not only from its own members but from others, which profits were divided between the participating policyholders and the shareholders of the company, which were entirely different bodies; while in the *Styles* case the individuals had associated themselves together for mutual insurance, that is to say "they contributed annually to a common fund out of which payments were to be made in the event of death to the representatives of the persons thus associated together. These persons were alone the owners of the common fund and entitled to its management. It was only

(1) (1885) 10 App. Cas. 438. (2) (1889) 14 App. Cas. 381.

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in respect of his membership that any person was entitled to be assured a payment upon death." In regard to these facts Lord Herschell, at page 409 of the report, uses this language:—

> Can it be said that the persons who are thus associated together for the purpose of mutual insurance, carry on a trade or vocation from which *profits* or *gains* accrue to them? I cannot think so.

At page 394 Lord Watson laid down the following:—

> When a number of individuals agree to contribute funds for a common purpose, such as the payment of annuities, or of capital sums, to some or all of them, on the occurrence of events certain or uncertain, and stipulate that their contributions, so far as not required for that purpose, shall be repaid to them, I cannot conceive * * * why contributions returned to them should be regarded as profits.

See also judgment of Vaughan Williams L.J., in *Equitable Life Assurance Society of the United States* v. *Bishop* (1).

The case of *Commissioners of Inland Revenue* v. *Sparkford Vale Co-operative Society Limited* (2), is clearly distinguishable: there the company bought milk from its own members and sold it to non-members, but, as Rowlatt J. pointed out in his judgment, the company (so far as appeared from the facts shewn), bought the milk outright and was in no sense a consignee for sale for its own members. Then it sold the milk to the public on its own account, and the difference between what it paid and what it received was profit to the company.

In *Fraser Valley Milk Producers' Association* v. *Minister of National Revenue* (3), the facts, in some respects, resemble those at bar. There is, however, this vital distinction: that in that case the contract provided for the payment of cash dividends on the paid up shares; it also provided that for the moneys retained by the association, under the contract, for purchasing facilities and equipment and so applied, paid up shares were to be issued and distributed to the purchasers in proportion to the butter fat value supplied by each. There it was held that the dividends received by the shareholders were received by them as shareholders. The dividends were, therefore, moneys paid out of profits, and, as profits, were assessable.

Two other cases were cited on behalf of the Minister. In *Liverpool Corn Trade Association, Limited* v. *Monks* (4),

(1) [1900] 1 Q.B., 177, at p. 189.
(2) (1925) 133 L.T. 231.
(3) [1929] Can. S.C.R. 435.
(4) [1926] 2 K.B. 110.

an incorporated company with a share capital of £6,000, provided a corn exchange and marketing facilities for its members, who were all engaged in the corn trade. Every member was required to subscribe for one share. Members paid an entrance fee and an annual subscription. Non-members might use the marketing and other facilities but they paid therefor a higher subscription than was charged against members. The company could, and at one time did, declare a dividend on its share capital. The articles of association provided that the directors might set aside out of the profits a reserve fund. This fund, in 1921, amounted to £74,000. It was held that the company's operations resulted in profits which were taxable. This case was distinguished from the *Styles* case (1) by the fact that the company had a share capital on which dividends might be paid if declared, and by the fact that both members and non-members paid individually for the services rendered and facilities provided. One of the purposes of the association, therefore, was the making of a profit on these services and facilities.

A somewhat similar case was that of *Cornish Mutual Assurance Co. Ltd* v. *Commissioners of Inland Revenue* (2). There the appellant was incorporated as a company limited by guarantee. It had no share capital and carried on a mutual fire insurance business. Each policyholder became a member on the issue to him of a policy. The revenue of the company was derived from: (*a*) entrance fees payable by members on taking up policies; (*b*) calls on members at the discretion of the directors, and (*c*) interest on investments. These funds were applicable by the directors to the general expenses of the company including payment of claims under its policies. The company was assessed in respect of the surplus arising from the contributions of its members. The House of Lords held that, although a mutual organization, the association carried on a trade or business and that such surplus was taxable. It was held taxable because, by a statute passed in 1920, it had been enacted that

> profits shall include in the case of mutual trading concerns the surplus arising from transactions with its members.

(1) (1889) 14 App. Cas. 381. (2) [1926] A.C. 281.

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The issuing of insurance policies by the association and the payment of fees and calls in respect thereof, was, without doubt, a transaction between the association and its members. The question however, was, did it arise from mutual trading? Their Lordships were of opinion that the term "mutual trading concerns" in the Act was intended to include such an association as the Cornish Mutual Company. A perusal of the judgment of the Lord Chancellor, rather indicates, in my opinion, that, but for the statutory provision (which has no counterpart in our Act), the surplus contributed by the members in that case might not have been considered taxable income.

The only other case to which reference need be made is *Jones* v. *S. W. Lancashire Coal Owners Association Limited* (1). In that case a mutual association was formed the sole activity of which was the indemnifying of its members, who were coal owners, against liability for compensation in respect of fatal accidents to workmen. The members of the association were the members protected by it, every member being liable to contribute a sum, not exceeding £25, in the event of a winding-up. The association formed a general fund by making calls upon members proportionate to the wages paid them for the time being, and the balance of the ordinary call fund was transferred to the reserve fund into which the extraordinary calls were also paid. Upon retirement a member could get back in cash a portion of his share in the reserve fund but, apart from that, members had no right at all to the cash in the reserve fund. It was held that the surplus, in respect of which the association was assessed, was not a profit made by it, as the association was mere machinery for the purpose of enabling members to insure themselves. In his judgment, Rowlatt J., at page 404, said:—

> As I understand it, all that the company does is to collect money from a certain number of people and apply it for the benefit of those same people, not as shareholders in the company, but as the people who subscribed it. As I understand the *New York* case (*supra*), (2), the decision was that in such a case there is not any profit; it does not matter whether these people are called members of the company, or participating policyholders, or anything else; all that the company is doing is to collect

(1) Reported, along with *Thomas* v. *Richard Evans & Co. Ltd.*, in 42 T.L.R. 401 (1926).

(2) (1889) 14 App. Cas. 381

money from people for those people, to do certain things for them, and let them have the balance of their profit in some form or other, and there is no profit to the company in that transaction. If the people do it for themselves there is no profit. If they incorporate a legal entity to do it for them, and to provide the machinery for them, there is equally no profit * * *

and at page 405:—

I think the broad principle there laid down was that, if the interest in the money does not go beyond the people who subscribe it, or the class of people who subscribe it, then, just as there is no profit of any sort earned by the people themselves, if they act for themselves, so there is none if they get a company to act for them.

Just what is the line which separates the two classes of cases is difficult to define. Each case must depend upon its own particular facts. Although the Association has a share capital, the prohibition against paying a dividend thereon shews that it is not a profit making scheme for the Association or its shareholders. That of itself might not be conclusive. The material before us, however, shews that the reserves assessed were not contributed by the growers as payment for services rendered by the Association. Nor did they result from any trading between them, they were rather advances made by the growers to their agent to enable it to carry out the provisions of the marketing agreement. These advances were made on the understanding that, until, in the opinion of the agent, they were no longer required for the purposes for which they were advanced, they need not be returned to the growers, but, that, until they were returned, each grower would have a credit on the books of the Association for the amount contributed by him. No one but a grower who contributed to the reserves was entitled to a credit in respect thereof, or to participate in their distribution when distributed. Stress was laid by counsel for the Minister on the fact that there was no obligation upon the Association to distribute the reserves among the growers either in cash or in specie. The answer to this contention seems to be that there is no necessity for any contractual or statutory obligation. As the growers who contribute the reserves have, in their capacity as shareholders who elect the directors, the absolute control and management of the Association, it must be amenable to their will without any express provision to that effect. As the basis of chargeability to income tax is the operation of a trade or business giving rise to a profit, and as the Asso-

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ciation in this case in respect of the reserves assessed is merely machinery for collecting contributions from the growers, not as shareholders of the Association but as subscribers to the fund, and for using those moneys for the benefit of the growers and handing them back in some form or other when no longer required, I am of opinion that the sums assessed cannot properly be said to be "profits or gains" of the Association. The appeal, therefore, should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *C. F. Elliott.*

Solicitor for the respondent: *O. M. Biggar.*